IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 26114 of 2005(H)

PETITIONER:

XAVIER ANTONY, PUNNACKAL THOPPIL
PURAYIDAM, THUMPOLY P.O.,
ALAPPUZHA - 8.

BY ADV. SRI.K.K.SATHEESH

RESPONDENTS:
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1. UNION OF INDIA REPRESENTED BY THE
SECRETARY, MINISTRY OF HOME AFFAIRS,
FREEDOM FIGHTERS' DIVISION, LOK NAYAK BHAVAN,
KHAN MARKET, NEW DELHI-110 003.

2. STATE OF KERALA REPRESENTED BY THE
SECRETARY, GENERAL ADMINISTRATION (FFP.A)
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY ADV. SRI.CYRIAC KURIAN, CGSC
GOVERNMENT PLEADER SRI. V.T.K. MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 26114/2005 H

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORDER NO. H4/46004/90 FY. 7/5/93 OF THE DIST. COLLECTOR, ALAPPUZHA.

EXT.P2. COPY OF THE APPLICATION DT. 4/4/98 BY THE PETITIONER TO THE RESPONDENT.

EXT.P3. COPY OF THE PKC BY SRI. SUKUMARAN DT. 4/4/98.

EXT.P4. COPY OF THE NARC BY THE CJM COURT, ALLEPPEY IN CASE NO. P.E. 7/1122/ME.

EXT.P5. COPY OF THE LETTER NO. 46200/FFP/ A2/2000/GAD DT. 6/6/00 BY THE R2 TO THE R1.

EXT.P6. COPY OF THE COMMUNICATION NO. 119/22/2000/FF SZ/ DT. 4/8/00BY THE R1 TO THE PETITIONER.

EXT.P7. COPY OF THE REPRESENTATION BY THE PETITIONER TO THE R1 DT. 25/7/05.

EXT.P8. COPY OF THE NARC BY THE SUPDT. OF POLICE, ALAPPUZHA DT. 10/5/05.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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T.R.RAMACHANDRAN NAIR, J.

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WP(C).No. 26114 of 2005-H.

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Dated this the 21st day of August, 2007.

J U D G M E N T

This writ petition is filed challenging the order Ext.P6 declining to grant Swathantrata Sainik Samman pension. The short facts are; the petitioner is a freedom fighter who had actively participated in the Punnapra-Vayalar struggle. On account of his participation in the said struggle an arrest warrant was issued against him by the Special Magistrate Court, Alappuzha in case No.P.E.7/1122 ME and in order to evade the arrest he had gone underground for a period of more than ten months from October, 1946 to September, 1947. He was granted pension under the State scheme as per order dated 7.5.1993 of the District Collector (Ext.P1).

2. Ext.P2 is the application for grant of SSS pension dated 4.4.1998 which was submitted after the Central Government recognised the movement as part of National Freedom Struggle with effect from 20.1.1998. Ext.P3 is the personal knowledge certificate issued by a prominent freedom fighter Sri.Kunjan Sukumaran. The certifier is a grantee of Central pension, State pension and also holder of 'Thamrapathra'. Ext.P4 is the non-availability of records certificate issued by the Chief Judicial Magistrate Court, Alappuzha in case No.P.E.7/1122 ME. As per Ext.P5 the State Government specifically

recommended the case for grant of pension under the Central scheme. This recommendation was granted after specifically referring to the non-availability of records certificate from the Chief Judicial Magistrate Court, Alappuzha and abscondence certificate from Sri.Kunjan Sukumaran a prominent freedom fighter. In Ext.P6 the reasons stated for the rejection are; (i) want of primary evidence from official records to claim the underground suffering., (ii) that warrant of arrest is not sufficient for grant of pension., and (iii) the non-availability of records certificate lacks vital details, and in the absence of valid non-availability of records certificate the personal knowledge certificate cannot be considered.

3. The petitioner thereafter filed Ext.P7 representation along with Ext.P8 non-availability of records certificate from the Superintendent of Police, Alappuzha stating that the records connected with the case in Crime No.P.E.7/1122 is not available. Ext.P4 is the non-availability of records certificate from the Chief Judicial Magistrate Court, Alappuzha and the case number is P.E.7/1122. It is clearly certified that the records of the year 1122 have already been destroyed. It is based on this the State Government recommended sanction of pension. Therefore, the same ought not have been rejected for the reason that the date of institution of the case and the date of disposal is not mentioned in the certificate. When the records are destroyed the Court will not be able to certify the date of institution and the date of

disposal obviously. Therefore, the said reason regarding the non acceptability of the non-availability of records certificate is not correct. Apart from that as the State Government has recommended the application no further certificate was needed. This aspect is covered by the decision of this Court in OP.Nos.7749/2000 and 9558/1999. In the first decision, after considering a similar objection it was held as follows:

> **"The only point raised in the counter-affidavit is non-production of non-availability records certificate (NARC) from State Government. After considering NARC from the Judicial First Class Magistrate's Court and after considering the two certificates issued from the veteran freedom fighters and on local verification through District Collector, State Government recommended pension from the SSS scheme. After recommendation from State Government it cannot be rejected mainly on the ground that NARC was not given by the State Government.'**

I respectfully agree with the above findings. In the later decision also has laid down in similar circumstances in the following manner:

> **"..... after the District Advisory Committee's decision and after production of the certificates, State Government has satisfied and State Government has forwarded the application of the petitioner. That itself shows that State Government has accepted the contentions of the petitioner. No further certificate is necessary. Since petitioner remained underground for more than six months to evade arrest for his participation in Quit India Movement, he is entitled to freedom fighters pension as per SSS pension scheme."**

4. In both these cases, this Court was pleased to hold that the petitioners are entitled for grant of pension. Therefore, the reasons noted as items (iii) and (iv) in Ext.P6 are unsustainable. The scheme as such provides

in clause (b) of Explanation 4, the eligibility criteria which reads as follows:

> **"(b) A person who remained underground for more than six months provided he was;**
>
> **1. a proclaimed offender; or**
>
> **2. one on whom an award for arrest/head was announced; or**
>
> **3. one for whose detention order was issued but not served."**

5. Therefore, a person who remained underground for more than six months after a warrant of arrest was issued against him is eligible for grant of pension. Therefore the reason stated as item 2 in Ext.P6 is also not correct. The case of the petitioner is that a warrant of arrest was issued in respect of case No.P.E.7/1122 ME which is supported by the personal knowledge certificate issued by the certifiers and the non-availability of records certificate issued by the Chief Judicial Magistrate Court. Therefore it is not the requirement of the scheme that the warrant of arrest should be followed by some other proceedings. Now there is a non-availability of records certificate from the Superintendent of Police also (Ext.P8). The application could not have been rejected for want of primary evidence also since in this case in the absence of primary evidence, secondary evidence in the form of NARC and PKC have been produced by the petitioner.

6. Therefore, Ext.P6 is quashed. It is declared that the petitioner is eligible for grant of pension under the SSS scheme. Consequential orders

shall be passed within a period of six weeks from the date of receipt of a copy of this Judgment. Since the application is dated 4.4.1998 the pension shall be sanctioned from the date of receipt of the application in the light of the decision of this Court in *Union of India v. Radhamony* (2005(4) KLT 27).

The writ petition is allowed as above. No costs.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-